

TITLE 14. Fish and Game Commission

Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 215, 220, 5508, 7071 and 8587.1, of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 210, 215, 220, 5508, 7071, 7120, 8585.5, 8586 and 8587.1, of said Code, proposes to amend sections 1.91, 27.60, 27.65, 27.82, 27.83, 28.26, 28.27, 28.28, 28.29, 28.54, 28.55, 28.56, 28.58, and 28.90, Title 14, California Code of Regulations, relating to Recreational Groundfish Fishing Regulations for 2005 and 2006 for Consistency with Federal Rules.

Informative Digest/Policy Statement Overview

Changes in California's ocean sport fishing regulations for all federally-designated groundfish (including rockfish, lingcod, cabezon, kelp greenling, and California scorpionfish), and associated state-managed species (rock greenling, ocean whitefish and California sheephead) are proposed for consideration by the Fish and Game Commission (Commission) for 2005 and 2006. The proposals include: changes to management areas, changes to fishing seasons and fishing depths, and changes to size and bag limits. These regulatory changes are needed to help achieve groundfish management goals, including rebuilding of "overfished" stocks of rockfish and lingcod, and will help achieve consistency between state regulations and federal groundfish regulations for 2005 and 2006.

The proposed management measures (regulations) are intended to keep the total fishing mortality for a stock within the harvest limit (optimum yield or OY, recreational harvest guideline, or recreational harvest target) established for that stock for the year. Many groundfish species are found in multi-species assemblages, and, thus, species with relatively low harvest limits may constrain fishing for other species. Combinations of closed seasons, closed areas, size limits, and bag limits are proposed to prevent exceeding all harvest limits.

PROPOSED CHANGES

1. To protect rockfish and lingcod, existing regulations establish seasons and depth closures for 56 species of federal groundfish and three state-managed species found in association with rockfish and lingcod (rock greenling, California sheephead, and ocean whitefish). The proposed regulations would expand the list of species covered by the season and depth closures to all species of federal groundfish as well as rock greenling, California sheephead, and ocean whitefish. The following exemptions to this provision are proposed:
 - a. Allow retention of 8 species of flatfish that are federally-designated groundfish during groundfish closures and in areas closed to groundfish fishing if the flatfish are taken with sanddab gear (No. 2 size or smaller hooks and a weight of two pounds or less).
 - b. Allow anglers to take leopard shark (a federal groundfish) in the following enclosed bays during groundfish closures and in areas closed to fishing for groundfish: Humboldt Bay, Drakes Estero, Bolinas Bay, Tomales Bay, Bodega Harbor, San Francisco Bay, Elkhorn Slough, Newport Bay, Alamitos Bay, San Diego Bay, and Mission Bay.
 - c. Exempt divers using spearfishing gear and shore-based anglers from most of the groundfish closures. Divers and shore-based anglers would not be allowed to take lingcod during the months of January, February, March, and December. Fishing gear

- other than spearfishing gear would be prohibited onboard the vessel or watercraft used while diving under this exemption.
2. The proposed regulations would subdivide the existing Central Rockfish and Lingcod Management Area (RLMA) into three areas (North-Central RLMA, Monterey South-Central RLMA, and Morro Bay South-Central RLMA) to further increase fishing opportunities while keeping the catch within the harvest limits. The boundaries for the proposed areas are:
 - a. North-Central RLMA – 40°10' N. lat. (near Cape Mendocino, Humboldt County) to 37°11' N. lat. (at Pigeon Point, San Mateo County)
 - b. Monterey South-Central RLMA – 37°11' N. lat. (at Pigeon Point, San Mateo County) to 36°00' N. lat. (near Lopez Point, Monterey County)
 - c. Morro Bay South-Central RLMA – 36°00' N. lat. (near Lopez Point, Monterey County) to 34°27' N. lat. (at Point Conception, Santa Barbara County).
 3. The proposed limits on bocaccio reflect that the proposed division of the Central RLMA into three regions.
 4. The proposed regulations would redefine the boundary for Cordell Bank as a 100-fathom depth contour encompassing Cordell Bank.
 5. Different season dates and fishing depths are proposed for each of the five proposed RLMAs:
 - a. Northern RLMA (Oregon/California border - near Cape Mendocino): A four-month season (July – October) with fishing permitted in waters less than 40 fathoms. For exemptions, see #1 above.
 - b. North-Central RLMA (near Cape Mendocino - Pigeon Point): A five-month season (July – November) with fishing permitted in waters less than 20 fathoms. For exemptions, see #1 above.
 - c. Monterey South-Central RLMA (Pigeon Point - near Lopez Point): A five-month season (July – November) with fishing permitted in waters less than 20 fathoms. For exemptions, see #1 above.
 - d. Morro Bay South-Central RLMA (near Lopez Point - Point Conception): A five-month season (May - September) with fishing permitted in waters from 20 to 40 fathoms. For exemptions, see #1 above.
 - e. Southern RLMA (Point Conception – California/Mexico border): A seven-month season for all groundfish and associated state-managed species, except California scorpionfish, with fishing permitted in waters from 30 to 60 fathoms from March through June and in waters less than 40 fathoms from July through September. A three-month season for California scorpionfish with fishing permitted in waters less than 40 fathoms in October and November and in waters less than 20 fathoms in December. For exemptions, see #1 above.
 6. The proposed regulations would limit the species of rockfish that may be taken in waters less than 20 fathoms in the Cowcod Conservation Areas; only fishing for nearshore species of rockfish (black, black and yellow, blue, brown, calico, China, copper, gopher, grass, kelp, olive, quillback, and treefish rockfishes) would be allowed. The proposed regulations would allow fishing for sanddabs and some federally-designated flatfish with sanddab gear, and would continue to allow fishing for lingcod, cabezon, greenlings, California scorpionfish, California sheephead, and ocean whitefish in waters less than 20 fathoms in the Cowcod Conservation Areas.
 7. The proposed regulations for lingcod would increase the bag limit to two fish, decrease the size limit to 24 inches, and decrease the minimum fillet size to 16 inches in length. The proposed regulations would establish a special closure during primary spawning and nesting season for lingcod. Thus, in addition to the proposed closures for all groundfish species, all recreational take of lingcod would be prohibited in the months of January, February, March, and December.

8. The proposed regulations would allow the Department to change bag and size limits for federal groundfish species and associated state-managed species in-season when the Department projects that one of the specified annual harvest limits will be exceeded prior to the end of the year. The proposed regulations would also give the Department the authority to open a fishing season, increase a bag limit, and/or decrease a size limit for federal groundfish species and associated state-managed species if catches earlier in the year were less than predicted. The proposed regulations would allow the seasons, fishing depths, bag limits, and size limits to differ by geographic locations, time of year, mode of fishing (private boats, commercial passenger fishing vessel, shore-based anglers, and divers), and gear used. The proposed regulations clarify that the harvest limits established in federal regulations may be optimum yield (OY), recreational harvest guidelines, or recreational harvest targets.
9. In every section of the regulations that may be changed in-season, the proposed regulations state that fishing rules may change during the year or season, and provide information on how to obtain the latest fishing rules. The latest fishing rules will be available on the Department's website, on an automated phone line, and at Department offices.
10. The proposed state regulations provide the Commission with the following options for modifying existing bag limits for cabezon and greenlings:
 - (1) Cabezon - reduce the cabezon bag limit from three fish to (1-2) fish; and/or establish a different bag limit (1-2 fish) for divers and shore-based anglers, recognizing that divers and shore-based anglers will be authorized to fish year-round for these species.
 - (2) Greenlings - reduce the bag limits for greenlings of the genus *Hexagrammos* (kelp and rock greenlings) from two fish to one fish; and/or establish a different bag limit (one fish) for divers and shore-based anglers, recognizing that that divers and shore-based anglers will be authorized to fish year-round for these species.
11. The following changes are proposed for clarity or consistency:
 - a. Add a list of all the federal groundfish species by category (categories include groups such as sharks, flatfish, and rockfish) to the regulations.
 - b. Modify the section on diving and spearfishing to explain that all types of fishing gear except spearfishing gear are prohibited aboard any vessel or non-motorized watercraft when spearfishing for groundfish and associated species in an area under a groundfish season or depth closure.
 - c. Divide the subsection on special bag limits into two subsections: a subsection that lists special limits for groundfish and associated state-managed species, and a subsection that lists the special limits for all other species. In the subsection that lists the species that do not have bag limits, note which species are the federally-designated groundfish.
 - d. Divide the subsection on Cowcod Conservation Areas into two subsections: one describing the boundaries, and the other describing fishing restrictions.
 - e. Modify the language of the section on the California Rockfish Conservation Areas for clarity, and add exemptions for divers and shore-based anglers.
 - f. Modify the subsections on open seasons and areas in the sections on California sheephead, lingcod, cabezon, kelp and rock greenlings, California scorpionfish, rockfish, and ocean whitefish to simply refer to Section 27.82, Title 14, CCR, which contains the season and fishing depth for all these species.
 - g. Make minor non-substantial changes to various sections for consistency in presentation of size limit information.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Veterans Memorial Building, 209 Surf Street, Morro Bay, California, on Friday, August 27, 2004 at 8:30 a.m. or as soon thereafter as the matter may be

heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the James W. Kellogg Memorial Building, 935 Detroit Avenue, Concord, California, on Friday, October 22, 2004 at 8:30 a.m. or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments may be submitted on or before October 15, 2004 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than October 22, 2004 at the hearing in Concord. E-mail comments must include the true name and mailing address of the commentor.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Robert R. Treanor or Sherrie Koell at the preceding address or phone number. **Marija Vojkovich, Offshore Ecosystem Coordinator, Department of Fish and Game, Marine Region, (805) 568-1246 has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the above address. Notice of the proposed action shall be posted on the Fish and Game Commission website at http://www.dfg.ca.gov/fg_comm

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Proposed additions to the list of species included in the closures to protect rockfish and lingcod are not expected to have an economic impact since few of the additional species are typically caught by recreational anglers. Flatfishes and leopard shark are caught by recreational anglers, and provisions have been made to allow for the take of these species under certain circumstances.

Proposed alterations to the boundaries are not expected to have a direct economic impact. Rather, the increased resolution in management areas allows the regulations to be tailored to each area's biological and socio-economic needs. This way the State can help minimize the impacts and disruption to recreational fishing activities, while maintaining healthy fish stocks and a satisfying recreational experience.

Businesses providing services to divers and shore-based anglers are likely to have a positive economic benefit, because the proposed regulations allow these groups to fish year round.

The proposed changes to the provisions for lingcod and California scorpionfish are not expected to have an economic impact. Also, the proposed changes to the Department's authority to take in-season action are not expected to have any direct economic impact. Impacts would only occur if the advertised harvest limits were reached before the end of the year and the Department closed the fishery. The proposed changes include provisions that would allow the Department to reduce effort by modifying bag and size limits in-season if the catch is higher than projected. This would lessen the likelihood that the fishery would need to be closed before the end of the year and lessen the potential economic impact of a closure. In addition, the proposed regulations would allow the Department to increase the duration of a season or modify bag and size limits if the catch was lower than projected. A positive economic impact would be expected if the regulations were relaxed in-season.

The proposed changes to the fishing seasons and fishing depths may have economic impact on small businesses in California, primarily Commercial Passenger Fishing Vessels (CPFV). The greatest impact may be in Del Norte and Humboldt counties (Northern RLMA) where the fishing season was reduced from twelve to four months (July through October). July through October is typically the period of greatest activity for CPFV's in the Northern RLMA, though the CPFV operations contribute only about 10 percent of total recreational catches for this area. This time period coincides with weather trends when the winds and seas generally do not prohibit fishing. In the area from Cape Mendocino to Lopez Point (North-Central RLMA and Monterey South-Central RLMA), the duration of the fishing season proposed for 2005 and 2006 is the same as for 2004, and, thus, no economic impact is expected. In the area from Lopez Point to Point Conception (Morro Bay South-Central RLMA), the proposed season is four months shorter than in 2004. This is not expected to represent a significant economic impact, since the time period January through April amounts to only about 5.2 percent of the annual groundfish fishing activity in this area. South of Point Conception (Southern RLMA), the proposed season will be three months

shorter than the 2004 season. The closure October through December does represent a period typically active for the CPFV operations in this area, based on recent catch history. In 2003, about 31 percent of total annual recreational groundfish catches in the Southern and Morro Bay South-Central RLMAs (combined) were from CPFV operations. Of those catches, 29 percent and 17 percent of annual CPFV catches occur in the period September-October and November-December, respectively (based on MRFSS RecFIN data from 1999 when fishing was less regulated and indicative of less constrained fishing activities. 1999 MRFSS). Earlier studies on marine recreational fishing expenditures, for all species, show that as much as \$51 million is spent on CPFV fees (2001 NMFS). Thus, in a worst case situation, the proposed regulations for the Southern and Morro Bay South-Central RLMAs could represent combined revenue losses of several millions of dollars to CPFV operations. For example, if groundfish represent 50 percent of the target species for all fishing trips on Southern California CPFV's, this could amount to \$8 million in lost revenues ($\$51 \text{ million} \times 50 \text{ percent} \times (29 \text{ percent}/2) = \3.7 million for October only, and $\$51 \text{ million} \times 50 \text{ percent} \times 17 \text{ percent} = \4.3 million for November and December). However, overall economic impacts in the Southern RLMA may be reduced by the number of alternative marine sportfishing opportunities available to recreational anglers and divers in this area.

(b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. There are no new fees or reporting requirements associated with the proposed regulations.

(d) Costs or Savings to State agencies or Costs/Savings in Federal funding to the State: None.

(e) Nondiscretionary Costs/Savings to Local Agencies: None.

(f) Programs Mandated on Local Agencies or School Districts: None.

(g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.

(h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or

that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Robert R. Treanor
Executive Director

Date: August 3, 2004